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United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing
Filing Date: June 29, 2021

Case No.: PSH-21-0083

Issued: November 12, 2021

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the “Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (“Adjudicative Guidelines”), I conclude that the Individual should be granted a security clearance.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires possession of a security clearance. In 2020, the Individual completed a Questionnaire for National Security Positions. In response to one of the questions regarding psychological and emotional health, the Individual indicated that she had a mental health condition that substantially adversely affected her judgment, reliability, or trustworthiness. The DOE Local Security Office's (LSO) requested that the Individual be evaluated by a DOE-consultant psychologist ("Psychologist"). Subsequently, the LSO informed the Individual by letter ("Notification Letter") that it possessed reliable information that created substantial doubt regarding her eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised a security concern under Guideline I of the Adjudicative Guidelines.

¹ The regulations define access authorization as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual testified on her own behalf. The LSO presented the testimony of the Psychologist. The Individual submitted eleven exhibits, marked Exhibits A through K.² The LSO submitted seven exhibits, marked Exhibits 1 through 7.³

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline I (Psychological Conditions) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Ex. 1. Guideline I provides that "[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 27. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. *Id.* A condition that could raise a security concern is "[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness[.]" *Id.* at ¶ 28(b). The Notification Letter cited the Psychologist's conclusion that the Individual has a mental condition resulting from seizures that affects her judgment and emotional stability, and, during seizures, "she loses control over what she says for several hours." Ex.1. The above allegation justifies the LSO's invocation of Guideline I.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization.

² The Individual's exhibits A through F are contained within DOE's Exhibit 2. Thus, this Decision will cite to Exhibit 2 when referring to the Individual's exhibits A through F.

³ The LSO's exhibits were combined and submitted in a single, 205-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the LSO's exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The record includes the report the Psychologist produced after evaluating the Individual. Ex. 5. The report indicates that the Individual was diagnosed with Chiari Malformation, a condition that “impairs the flow of cerebral spinal fluid to the brain.” *Id.* at 64. During the evaluation, the Individual explained that, as a result of her condition and others, she had experienced physical symptoms that included seizures that have lasted several hours. *Id.* However, she stated that approximately three years had passed since her last seizure. *Id.* The Individual reportedly described being partially conscious and fully unconscious at times during seizures. *Id.* She further described speaking “gibberish” or saying inappropriate things during seizures because she has “no filter.” *Id.*

The Psychologist opined in the report that, during seizures, the Individual “may disclose things she should not due to having no filter.” *Id.* at 68 (quotation mark omitted). The Psychologist also stated that the Individual suffers from infrequent fainting episodes that last for very brief periods. *Id.* at 69. The Psychologist concluded that the Individual’s seizures have caused a mental condition that affects her judgment and emotional stability. The Psychologist further noted that the Individual possessed an injection device that “is supposedly helpful when [the Individual] feels a seizure approaching.” *Id.* However, by the Individual’s own report, she had never used it, did not know the name of it, and did not bring it with her to the evaluation. *Id.* The Psychologist opined that, while the Individual’s seizures seem to be controlled, he could not rule out the possibility that more would occur. *Id.*

The record also includes the Individual’s written response to the Notification Letter. Therein, she stated that her “medical condition is under control” and “create[s] no risk” to her ability to protect classified information. Ex. 2 at 9. She further stated that she is under the “care and treatment” of a physician for her condition, and she began taking medication after her last seizure, which occurred in 2018. *Id.* at 10. She stated that, as a result of an operation, her condition is more predictable, and she can tell when she is about to have a seizure. *Id.* at 12. She explained that she has ample time, sometime hours, to take action to prevent or mitigate an impending seizure. *Id.* at 14.

The Individual submitted eight character reference letters into the record. Ex. 2 at 22–27; Ex. J; Ex. K. Two of the Individual’s friends provided statements describing their observations having witnessed the Individual during her seizures, and both denied that she ever disclosed or stated anything inappropriate. Ex. J; Ex. K. The Individual also submitted medical records, pharmaceutical records, and a letter from her previous treating neurologist. Ex. G; Ex. H; Ex. I.

During the hearing, the Individual sought to demonstrate that she had mitigated the security concerns. She testified that, prior to her 2015 surgery, she was diagnosed with multiple medical

conditions, including Chiari malformation type I and postural orthostatic tachycardia syndrome (POTS). Tr. at 21, 81. Regarding Chiari malformation, the Individual testified that, in 2007, she underwent the first of two surgeries to correct the condition. *Id.* at 25. However, her seizures became more frequent and severe until her second surgery in 2015. *Id.* at 25–26.

The Individual testified that her 2015 surgery repaired several conditions including her Chiari malformation. *Id.* at 22–23. She stated that she still has POTS, which affects circulation and the autonomic nervous system that automatically controls heart rate, blood pressure, and other bodily functions. *Id.* The Individual testified that, in the past, when her POTS caused an abnormally high heart rate, it would trigger a seizure. *Id.* at 55. However, she testified that her POTS has improved since 2018. *Id.* at 46–47, 55.

The Individual testified that the last time she fainted due to POTS was in February 2020 while at a doctor’s office during a test. *Id.* at 55–56. The Individual explained that, if she faints during a seizure, she is only unconscious for “one or two seconds.”⁴ *Id.* at 72. She explained that her seizures would come in “waves” where “[she] would be shaking so much [she would] lose consciousness for a little bit, about one or two seconds[.]” and then she would come back into partial consciousness without being able to speak because she would be shaking. *Id.* at 74. She asserted that she is not at risk of making uncontrolled statements during these incidents because, when she shakes violently, it is very difficult for her to speak, and even when she has been partially conscious, she would be so exhausted that she could not talk. *Id.* at 73, 75.

The Individual testified that before she knew how to handle her seizures back in 2015, she would “act very silly[] . . . [and] laugh about everything” during a seizure. *Id.* at 51–52. She explained this behavior as what she referred to as having “no filter.” *Id.* at 51–52. She stated that her friends described it as like someone coming off anesthesia, and she provided written statements from two of her friends who witnessed the behavior and confirmed the same. *Id.* at 52; Ex. J; Ex. K. The Individual indicated that her seizures would continue for two hours at which point she became exhausted, and then she would start “acting in that silly state” where she would say “random facts.” *Id.* at 84–85. She asserted that she knew that she was making those statements and at the time found them to be “hilarious.” *Id.* at 100. The Individual stated that she may not have sufficiently explained to the Psychologist what she meant by “no filter” at the time of her evaluation. *Id.* at 102.

The Individual described that, since her 2015 surgery, her seizures have been less severe, and she also has, on average, two hours of advance notice that she is going to have a seizure. *Id.* at 28. She further testified that, since her 2015 surgery, her seizures are usually caused by specific triggers such as trauma, low blood sugar, and extremely low blood pressure. *Id.* at 31, 64–65. The Individual testified that she last experienced a seizure in April 2018. *Id.* at 33–34. The record contains hospital records which reflect that she received emergency treatment for POTS seizures on two occasions in April 2018. Ex. 2 at 30–31.

⁴ She stated that the only time she has had a prolonged period of unconsciousness during a seizure was prior to her 2015 surgery. *Id.* at 71. She testified that the worst prolonged event occurred seven years ago when she had a seizure with ongoing shaking that resulted in a lack of consciousness for nine hours. *Id.* at 72. The Individual asserted that she has not had a seizure remotely close to that severity since her 2015 surgery. *Id.*

Lastly, the Individual testified regarding her current treatment plan for her seizures. She stated that her primary treatment method to prevent seizures is her prescribed Sumatriptan pen (“pen”). *Id.* at 32, 66-67. She provided a photocopy of the pen and her prescription for it. Ex. F; Ex. H at 12. She testified that, since 2018, she has successfully prevented two seizures from occurring by using her pen after responding to the warning signs. *Id.* at 32, 67-68, 88. Additionally, the Individual testified that she exercises and maintains a high sodium and water diet as prescribed by her former treating neurologist, and she monitors her heart and vital signs regularly. *Id.* at 22, 93. Other than her pen, she asserted that she no longer has to take medication for seizures. *Id.* at 32. She also testified that, in addition to her above treatment plan, if she has a seizure, she can go to her hospital emergency department to receive a saline bolus. *Id.* at 54, 85–86. She testified that saline boluses are a form of emergency medical treatment, which involves receiving large doses of saline intravenously. *Id.* at 54, 85–86, 92–93. The record includes hospital treatment notes reflecting that she was treated for seizures with saline on three occasions between December 2017 and April 2018 Ex. 2 at 29–31.

The DOE Psychologist testified after observing the Individual’s hearing testimony. He explained that his previous opinion that the Individual’s seizures have caused a mental condition that affects her judgment and emotional stability was based on his understanding that, during seizures, the Individual loses control over what she says for several hours. *Id.* at 113. He then opined that, although the Individual still has a mental condition that affects her judgment, he did not believe there is a likelihood that she is going to have future significant seizures and there is a low risk that she would exercise poor judgment because of her condition. *Id.* at 112-14. Accordingly, he opined that the Individual has resolved his concerns regarding her mental condition. *Id.* at 116. He based his decision on a few factors. First, the Individual’s report that she has not had a seizure for over three years. *Id.* at 114. Second, the Individual’s assertions that her former neurologist told her she is unlikely to have significant seizures in the future. *Id.* at 111, 114-15. Third, the Individual’s testimony regarding the actions she took to prevent a seizure from occurring, including successfully preventing it with her pen. *Id.* at 114–15. Finally, the Individual’s testimony that her partial unconsciousness during POTS seizures is brief, lasting less than a minute instead of several hours. *Id.* at 111-12, 113.

V. ANALYSIS

A. Guideline I Considerations

Under Guideline I, the following relevant conditions could mitigate security concerns based on psychological conditions:

- (a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual’s previous condition is under control or in remission, and has a low probability of recurrence or exacerbation.

Adjudicative Guidelines at ¶ 29 (a), (c).⁵

I find that the Individual put forth sufficient evidence to apply the mitigating condition described under ¶ 29(a). First, the evidence demonstrates that her condition is readily controllable with treatment. The Individual testified that her last seizure occurred over three years ago in April 2018, which is corroborated by hospital records. She also provided a letter and evidence of a medical test from her former treating neurologist that supports her testimony that the severity of her seizures has significantly decreased since her second surgery in 2015. Furthermore, the Individual credibly testified that she has successfully used her pen to prevent seizures. Further still, the records demonstrate that she has used saline boluses as an effective emergency treatment to stop other seizures.

Second, the evidence demonstrates that the Individual has been consistently compliant with her treatment plan. She uses her prescription pen as needed to prevent seizures, she monitors her vital signs, and she is compliant with her prescribed diet and exercise regimen which are preventative measures to control her POTS condition. And, as stated in more detail below, the Psychologist opined that there is a low probability of the Individual's judgment being impaired by her condition. For the reasons stated above, I find that the Individual has established the applicability of ¶ 29(a) and therefore resolved the related security concerns.

I further find that the Individual has established the mitigating condition described under ¶ 29(c). I find persuasive the Psychologist's opinion that it is unlikely that the Individual is going to have significant seizures in the future and that her seizures have a low risk of impairing her judgment. The DOE Psychologist's opinion is based on his experience and the evidence in the record, including the Individual's testimony, the medical treatment records referenced above, and the clarifying evidence that when, in the past, the Individual lost consciousness during a seizure, she regained it within a matter of seconds without losing her ability to control her statements. Accordingly, I find that the Psychologist's conclusion, coupled with my above findings, demonstrate that the Individual's condition is readily controllable with treatment and has a low probability of recurrence or exacerbation. I therefore find that the Individual has resolved the Guideline I security concerns.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised a security concern under Guideline I of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual should be granted access authorization.

⁵ The additional mitigating factors for Guideline I are not applicable to these facts.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals